

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-629

Filed: 17 February 2015

BARRY HOYT BODIE

v.

Transylvania County

No. 05 CVD 334

CLAIRE VOEGLER BODIE

Appeal by defendant from order entered 20 February 2014 by Judge Mack Brittain in Transylvania County District Court. Heard in the Court of Appeals 5 November 2014.

Roberts & Stevens, P.A., by Phillip T. Jackson, for plaintiff-appellee.

Donald H. Barton, P.C., by Donald H. Barton, for defendant-appellant.

DIETZ, Judge.

This is the fourth time this equitable distribution case has come before us on appeal. The last time we heard this case, we remanded with instructions for the trial court to make a number of specific findings and then adjust its distributional decision accordingly.

In this fourth appeal, Defendant argues that the trial court's latest order suffers from *seventeen* separate reversible errors. This brings to mind an observation from the U.S. Court of Appeals for the Sixth Circuit which, faced with a similar situation, observed that "[w]hen a party comes to us with nine grounds for reversing

the district court, that usually means there are none.” *Fifth Third Mortg. Co. v. Chi. Title Ins. Co.*, 692 F.3d 507, 509 (6th Cir. 2012).

Here, Defendant’s seventeen arguments fall into three general categories. First, Defendant argues that the trial court made various findings outside the scope of the remand, thus violating the mandate rule. Second, Defendant contends that various fact findings are not supported by competent record evidence. Third, Defendant argues that the district court abused its discretion when selecting an appropriate distributive award.

For the reasons set forth below, we reject all seventeen arguments. When this Court remands an equitable distribution case for specific findings, such as the value of mortgages and tax liabilities, that remand necessarily authorizes the trial court to recalculate other related portions of the award that are impacted by the new findings (and, indeed, we specifically authorized the trial court to do so). With regard to whether the trial court’s fact findings are supported by competent evidence, we cannot address Defendant’s arguments because the record on appeal does not include the transcripts of the proceedings in which the trial court heard the relevant evidence. We are thus constrained to reject these arguments. Finally, the trial court was well within its discretion in reducing the distributive award to Defendant in light of its new fact findings on remand. Accordingly, we reject Defendant’s arguments and affirm the trial court.

Facts and Procedural History

Plaintiff Barry Hoyt Bodie and Defendant Claire Voegler Bodie married in April 1996 and separated in July 2005. One month later, Plaintiff commenced an action for child custody and equitable distribution. On 3 August 2009, the trial court entered an order on the equitable distribution claim ordering Plaintiff to pay Defendant a distributive award of \$100,000. Plaintiff appealed, but this Court dismissed the appeal as interlocutory because Defendant's alimony claim was still pending. *Bodie v. Bodie*, 208 N.C. App. 281, 702 S.E.2d 556 (2010) (unpublished) (*Bodie I*). In early 2011, after all issues were resolved in the lower court, Plaintiff again appealed to this Court. In an opinion filed 5 June 2012, we remanded to the trial court for additional findings of fact pertaining to the classification and values of specified items and to adjust any conclusions of law and its distributional decision as necessary. *Bodie v. Bodie*, 221 N.C. App. 29, 44, 727 S.E.2d 11, 21 (2012) (*Bodie II*). The trial court entered a new order on 23 August 2012 and Plaintiff appealed again.

On the third appeal to this Court, we remanded to the trial court to find several specific, additional facts:

- (1) the value of the appreciation of the 401(k) account;
- (2) whether the funds Plaintiff used to make post-separation payments on marital debts came from marital or separate property;
- (3) the value of the 2004 loan; and

(4) the value of the 2005 tax obligation.

Bodie v. Bodie, ___ N.C. App. ___, ___, 746 S.E.2d 22, 2013 WL 3131126, *5 (2013) (unpublished) (*Bodie III*). We also directed the trial court to classify a second mortgage as marital debt and find the value of that mortgage. *Id.* We then instructed the trial court to adjust its distributional decision as necessary in light of these new findings. *Id.*

On 20 February 2014, the trial court entered an order making the additional findings required by our mandate. In light of those findings, the trial court concluded that an “unequal division of the marital estate is equitable” and that the “previously ordered distributional award of \$100,000.00 to [Defendant] is not warranted based on the unequal distribution.” The trial court then reduced Defendant’s distributive award to \$25,000. Defendant timely appealed.

Analysis

I. Remand Instructions and the Mandate Rule

Defendant first argues that the trial court erred because it failed to strictly follow the mandate from this Court in *Bodie III* by going beyond the remand instructions in its findings of fact. We disagree.

“[W]hen reviewing an equitable distribution order, this Court will uphold the trial court's written findings of fact as long as they are supported by competent evidence. However, the trial court's conclusions of law are reviewed *de novo*.” *Mugno*

v. Mugno, 205 N.C. App. 273, 276, 695 S.E.2d 495, 498 (2010) (citation and internal quotation marks omitted). “On the remand of a case after appeal, the mandate of the reviewing court is binding on the lower court, and must be strictly followed, without variation and departure from the mandate of the appellate court.” *Collins v. Simms*, 257 N.C. 1, 11, 125 S.E.2d 298, 306 (1962).

Defendant argues that, when this Court remanded with instructions to make a series of specific findings of fact, the trial court was limited solely to making those findings, and could not alter other portions of its award. For example, Defendant contends the trial court went beyond the mandate by addressing the net value of a residential house located at 98 Soquilli Drive because “the value of the Soquilli house and its net date of separation value had been addressed” by this Court in *Bodie II*.

But in *Bodie III*, this Court expressly instructed the trial court to “(1) classify the second mortgage on the Soquilli house as marital debt; (2) find the value of that mortgage, and (3) adjust the distributional decision accordingly.” *Bodie III*, ___ N.C. App. at ___, 746 S.E.2d at 22, 2013 WL 3131126, at *5. Those remand instructions necessarily authorize the trial court to adjust any findings that are impacted by the newly determined mortgage value on the Soquilli house. When this Court remands an equitable distribution proceeding with instructions to recalculate the value of a home mortgage, this remand instruction necessarily anticipates that the trial court will, in turn, adjust the net value of the property in light of the new mortgage calculation. That is precisely what the trial court did here.

Similarly, the trial court did not violate the mandate rule by calculating the value of certain distributions from Plaintiff's 401(k) account and calculating the value of interest and penalties incurred to pay the parties' 2005 tax obligation. Again, these calculations were necessary in light of our instruction and the previous findings of the trial court. For example, after determining the value of the parties' 2005 tax liability as this Court's remand instructions required, the trial court necessarily had to determine how that liability was paid and the source of the funds used to pay it in order to arrive at an accurate distributional award. In short, after a careful review of the record, we are unable to identify any actions by the trial court that departed from our remand instructions. Accordingly, we reject Defendant's mandate rule arguments.

II. Review of Particular Fact Findings

Defendant also challenges several specific findings by the trial court as unsupported by the evidence. For example, Defendant challenges the trial court's determination of how much separate property Plaintiff used to pay down marital debt. Defendant makes similar arguments with respect to various other determinations of marital and divisible property values.

We are unable to review these arguments because the record on appeal does not include copies of the transcripts of the proceedings where evidence on these issues was submitted to the trial court. The trial court's order at issue in this appeal states

that its findings are based on “the greater weight of the evidence presented during the 30 January 2009, 3 March 2009, 5 May 2009, and 13 July 2009 sessions of Transylvania County District Court.” The record on appeal in this case does not include transcripts of those proceedings, although Plaintiff represents that those transcripts contain more than 800 pages of witness testimony.

The North Carolina Rules of Appellate Procedure state that in appeals from the trial division “review is solely upon the record on appeal, the verbatim transcript of the proceedings, if one is designated, and any other items filed pursuant to this Rule 9.” N.C. R. App. P. 9(a) (2013). We recognize that this is the fourth time this case has come before this Court, but nothing in our appellate rules excuses litigants from assembling a complete record simply because portions of that record may have been submitted to this Court in previous appeals years earlier. As the rules plainly instruct, we must review *this* appeal solely upon the record and verbatim transcripts submitted in *this* appeal.

Here, the record on appeal does not include the evidence and testimony on which the trial court relied to make the findings challenged by Defendant on appeal. “Where the record is silent on a particular point, we presume that the trial court acted correctly.” *Lawing v. Lawing*, 81 N.C. App. 159, 162, 344 S.E.2d 100, 104 (1986). Accordingly, we reject Defendant’s challenges to the trial court’s findings of fact.

III. Distributive Award

Defendant next argues that the trial court abused its discretion by reducing her \$100,000 distributive award to \$25,000. Defendant contends that this award is not a fair and equitable division of the parties' marital and divisible property.

Our standard of review of an equitable distribution order is abuse of discretion. *Shope v. Pennington*, ___ N.C. App. ___, ___, 753 S.E.2d 688, 690 (2014). "[T]he trial court's rulings in equitable distribution cases receive great deference and may be upset only if they are so arbitrary that they could not have been the result of a reasoned decision." *Lawing*, 81 N.C. App. at 162, 344 S.E.2d at 104.

As with our review of the trial court's findings of fact, our review of the trial court's distributive award decision is constrained by the lack of transcripts and other evidence documenting the proceedings below. The trial court stated in its order that, in light of the findings made on remand, "[t]he previously ordered distributional award of \$100,000.00 to Wife is not warranted based on the unequal distribution herein stated and the same should be rescinded in favor of a \$25,000 distributional award to Wife." On the record before us, there is nothing indicating that the distributive award is "so arbitrary that [it] could not have been the result of a reasoned decision." *Id.* Accordingly, we reject Defendant's challenge to the trial court's distributive award.

BODIE V. BODIE

Opinion of the Court

Conclusion

For the reasons set forth above, we reject Defendant's arguments in each of the seventeen issues presented on appeal and affirm the trial court's order.

AFFIRMED.

Judges BRYANT and DILLON concur.